



The following constitutes
the order of the court. Signed February 16, 2006

A handwritten signature in cursive script, appearing to read "Marilyn Morgan".

Marilyn Morgan
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
AUDIOHIGHWAY.COM,
Debtor.

Case 01-50102-MM
Chapter 7

**AMENDED MEMORANDUM DECISION
AND ORDER ON AMENDED FIRST
AND FINAL FEE APPLICATION OF
APPRAISER**

Before the court is the amended first and final fee application of Kevin Roe as appraiser for the Chapter 11 trustee and the Chapter 7 trustee. Roe was appointed as appraiser for the Chapter 11 trustee, Suzanne Decker, to assist in analyzing the viability of offers to purchase the estate's patents. He was reappointed as appraiser for the Chapter 7 trustee, Suzanne Decker, on December 19, 2001. Roe requests approval of fees incurred during the Chapter 11 case in the amount of \$10,000 and fees incurred during the Chapter 7 case in the amount of \$4,650. Having considered the application, the court awards final compensation in the amount of \$9,500 as a Chapter 11 administrative expense and \$4,650 as a Chapter 7 administrative expense.

Audiohighway.com commenced this case as a voluntary Chapter 11 case on January 10, 2001. Its primary business was the delivery of audio and video content over the internet and the sale of related products over the internet. Its revenue was derived from advertising on and product sales through the debtor's web site. Although it was a public company, Audiohighway had received notification that its

1 stock would be delisted from NASDAQ and had ceased operations before it filed the bankruptcy
2 petition. As it explored merger alternatives, it continued to pay its executive management very generous
3 salaries during the Chapter 11 case. On motion by the United States Trustee, the court ordered the
4 appointment of a Chapter 11 trustee on April 11, 2001, and Suzanne Decker was appointed. On the
5 Chapter 11 trustee's motion, the case was converted to one under Chapter 7 on November 27, 2001.
6 The Chapter 7 trustee has been liquidating assets and prosecuting avoidance actions.

7 Section § 330 of the Bankruptcy Code provides that the court may award to a trustee, an
8 examiner, or a professional person employed under §§ 327 or 1103 reasonable compensation for actual,
9 necessary services rendered and reimbursement of actual, necessary expenses. In determining the
10 amount of reasonable compensation, the court considers the nature, extent, and value of the
11 professional's services, taking into account all relevant factors, including whether the services were
12 necessary to the administration of, or beneficial at the time at which the service was rendered toward
13 the completion of, a case and whether the services were performed within a reasonable amount of time
14 commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.
15 11 U.S.C. § 330(a)(3). The applicant bears the burden of establishing entitlement to an award and
16 demonstrating that the fees are reasonable. Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). With the
17 exception of the tasks described below, the services that Roe provided were necessary, beneficial to the
18 estate, and appropriate, and reasonable compensation may be allowed.

19 Section § 330, however, contemplates compensation only for professional services. Services
20 that are clerical in nature are properly chargeable to the firm as an overhead expense and not to the
21 bankruptcy estate. Fees for services that are purely clerical, ministerial, or administrative should be
22 disallowed. Missouri v. Jenkins, 491 U.S. 274, 288 fn.10 (1989); Sousa v. Miguel, 32 F.3d 1370, 1374
23 (9th Cir. 1994). Paragraph 18 of the Guidelines for Compensation and Expense Reimbursement of
24 Professionals and Trustees for the United States Bankruptcy Court, Northern District of California ("Fee
25 Guidelines") expressly provides that time spent performing administrative tasks is not compensable.

26 The following time entries, which total \$500, are for services that are clerical in nature and are
27 not compensable from the estate. Compensation based on these time entries is disallowed.
28

Date	Time-Keeper	Description	Hours	Amount
09/26/01	Roe	Create a physical file and an electronic file.	0.20	50.00
09/26/01	Roe	Obtain copies of the patents from the Internet.	0.30	75.00
10/08/01	Roe	Make minor typographical corrections to the opinion letter. Email opinion letter to the Bankruptcy Trustee and Attorney.	0.30	75.00
10/10/01	Roe	Edit and print out the full Opinion letter, and fax it to the Bankruptcy Trustee.	0.70	175.00
10/15/01	Roe	Download patents from vendor and print out at high resolution. Mail patents to MusicNet.	0.50	125.00
		TOTAL		500.00

For the reasons set forth above, the court denies approval of fees in the amount of \$500 and awards final compensation in the amount of \$9,500 as a Chapter 11 administrative expense and \$4,650 as a Chapter 7 administrative expense.

Good cause appearing, IT IS SO ORDERED.

*** * * END OF ORDER * * ***

Case No. 01-50102-MM

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